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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/741,672	12/19/2000	Bart Buijsse	PHQ 99-015	7057
24737	7590	09/09/2005	EXAMINER	
PHILIPS INTELLECTUAL PROPERTY & STANDARDS P.O. BOX 3001 BRIARCLIFF MANOR, NY 10510			YUN, JURIE	
			ART UNIT	PAPER NUMBER
			2882	
DATE MAILED: 09/09/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/741,672

**Applicant(s)**

BUIJSSE, BART

**Examiner**

Jurie Yun

**Art Unit**

2882

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 01 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 December 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☒ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. In response to the filing of the Appeal Brief on 6/1/05, finality is withdrawn in view of newly discovered references.

### Claim Objections

2. Claims 1-8 are objected to as the structural limitations conveyed by the intended use language in their preambles are unclear. See MPEP 2111:

### PREAMBLE STATEMENTS RECITING PURPOSE OR INTENDED USE

The claim preamble must be read in the context of the entire claim. The determination of whether preamble recitations are structural limitations or mere statements of purpose or use "can be resolved only on review of the entirety of the [record] to gain an understanding of what the inventors actually invented and intended to encompass by the claim." *Coming Glass Works*, 868 F.2d at 1257, 9 USPQ2d at 1966. If the body of a claim fully and intrinsically sets forth all of the limitations of the claimed invention, and the preamble merely states, for example, the purpose or intended use of the invention, rather than any distinct definition of any of the claimed invention's limitations, then the preamble is not considered a limitation and is of no significance to claim construction. *Pitney Bowes, Inc. v. Hewlett-Packard Co.*, 182 F.3d 1298, 1305, 51 USPQ2d 1161, 1165 (Fed. Cir. 1999). See also MPEP § 2112 - § 2112.02.

There is no structure in the body of the claim directed to an X-ray microscope or to an electron microscope. Accordingly, this is not given any patentable weight.

### Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-4, 6, and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hertz et al. (USPN 6,002,744) in view of Noda et al. (USPN 4,723,262).

5. With respect to claims 1-3 and 6, Hertz et al. disclose an X-ray microscope which includes a device for generating X-rays (see abstract), which device is provided with means for producing a fluid jet (17), and means for forming a focused beam (3) whose focus (11) is situated on the fluid jet. Hertz et al. also disclose the cross-section of the fluid jet (17) in the direction of the focused beam (3) is smaller than that in the direction transversely thereof. Hertz et al. do not disclose the focused beam is a beam of electrically charged particles. Hertz et al. use a laser beam. Noda et al. also teach use of a laser beam, but they also teach that an electron beam can be used as well to impinge a fluid target to produce X-rays (column 6, lines 26-36). It would have been obvious to one of ordinary skill in the art at the time the invention was made to use an electron beam instead of a laser beam in the Hertz et al. apparatus, because an electron beam would be a lot cooler temperature wise, and would result in lower operating costs and longer life of the apparatus.

6. With respect to claim 4, Hertz et al. disclose the fluid jet consists essentially of liquid oxygen or nitrogen (column 5, lines 55-64).

7. With respect to claim 7, Hertz et al. disclose use as an X-ray microscope (column 3, line 34).

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8. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hertz et al. (USPN 6,002,744) in view of Noda et al. (USPN 4,723,262) as applied to claim 1 above, and further in view of Wang (USPN 5,044,001) and Iketaki et al. (USPN 5,835,262).

9. With respect to claim 5, Hertz et al. in view of Noda et al. teach use of an electron beam (Noda et al., column 6, lines 26-36). However, Noda et al. do not disclose the specifics of the source of the electron beam such as by an electron gun for a cathode ray tube. However, this is a well known, as taught by Wang. Wang discloses the means for producing a focused beam of electrically charged particles (9) comprises an electron gun (3) for a cathode ray tube. It would have been obvious to one of ordinary skill in the art at the time the invention was made that the beam of focused electrically charged particles is produced by an electron gun for a cathode ray tube, because this is well known in the art as taught by Wang. Wang does not disclose the X-ray microscope includes a condenser lens disposed between the fluid jet and an object to be imaged by means of the X-ray microscope. Iketaki et al. disclose a condenser lens (Fig. 7, 24) which is arranged between the target (23) and the object (27) to be imaged by means of the X-ray microscope. It would have been obvious to one of ordinary skill in the art at the time the invention was made to further modify Hertz et al. in view of Noda et al. to include a condenser lens arranged between the fluid jet and the object to be imaged, to obtain better imaging of the transmission X-rays. Hertz et al. disclose use of the apparatus for X-ray microscopy (column 3, line 34).

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10. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hertz et al. (USPN 6,002,744) in view of Noda et al. (USPN 4,723,262) as applied to claim 6 above, and further in view of Wang (USPN 5,044,001).

11. With respect to claim 8, Hertz et al. disclose use as an X-ray microscope (column 3, line 34), but not as a scanning electron microscope. Wang discloses the x-ray microscope being a scanning x-ray microscope (Fig. 2). It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the Hertz et al./Noda et al. apparatus as a scanning X-ray microscope, depending on the application being done, as taught by Wang.

#### Response to Arguments

12. Applicant's arguments with respect to claims 1-8 have been considered but are moot in view of the new ground(s) of rejection.

#### Conclusion

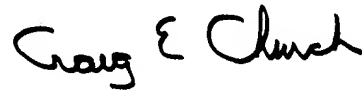
13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jurie Yun whose telephone number is 571 272-2497. The examiner can normally be reached on Monday-Friday 8:30-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ed Glick can be reached on 571 272-2490. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jurie Yun  
September 1, 2005

A handwritten signature in black ink that reads "Craig E Church". The signature is written in a cursive, slightly slanted style.

Craig E. Church  
Primary Examiner